

Chapter 4

GENERAL REVIEW PROCEDURES

- 4.1 General Requirements**
- 4.2 Zoning Text Amendments**
- 4.3 Zoning Map Amendments and Zoning Changes**
- 4.4 Special Use Permits**
- 4.5 Zoning Variations**
- 4.6 Interpretations and Appeals of Administrative Decisions**
- 4.7 Annexations**
- 4.8 Certificates of Occupancy**

4.1 General Requirements

4.1.1 Authority to File Applications

Unless otherwise stated, all applications under this Chapter shall be initiated by the fee simple owners of the subject property or their authorized agent, or by the City of Woodstock.

4.1.2 Ownership Disclosure

The ownership disclosure requirements of this Section shall apply to all applications pertaining to specific real property.

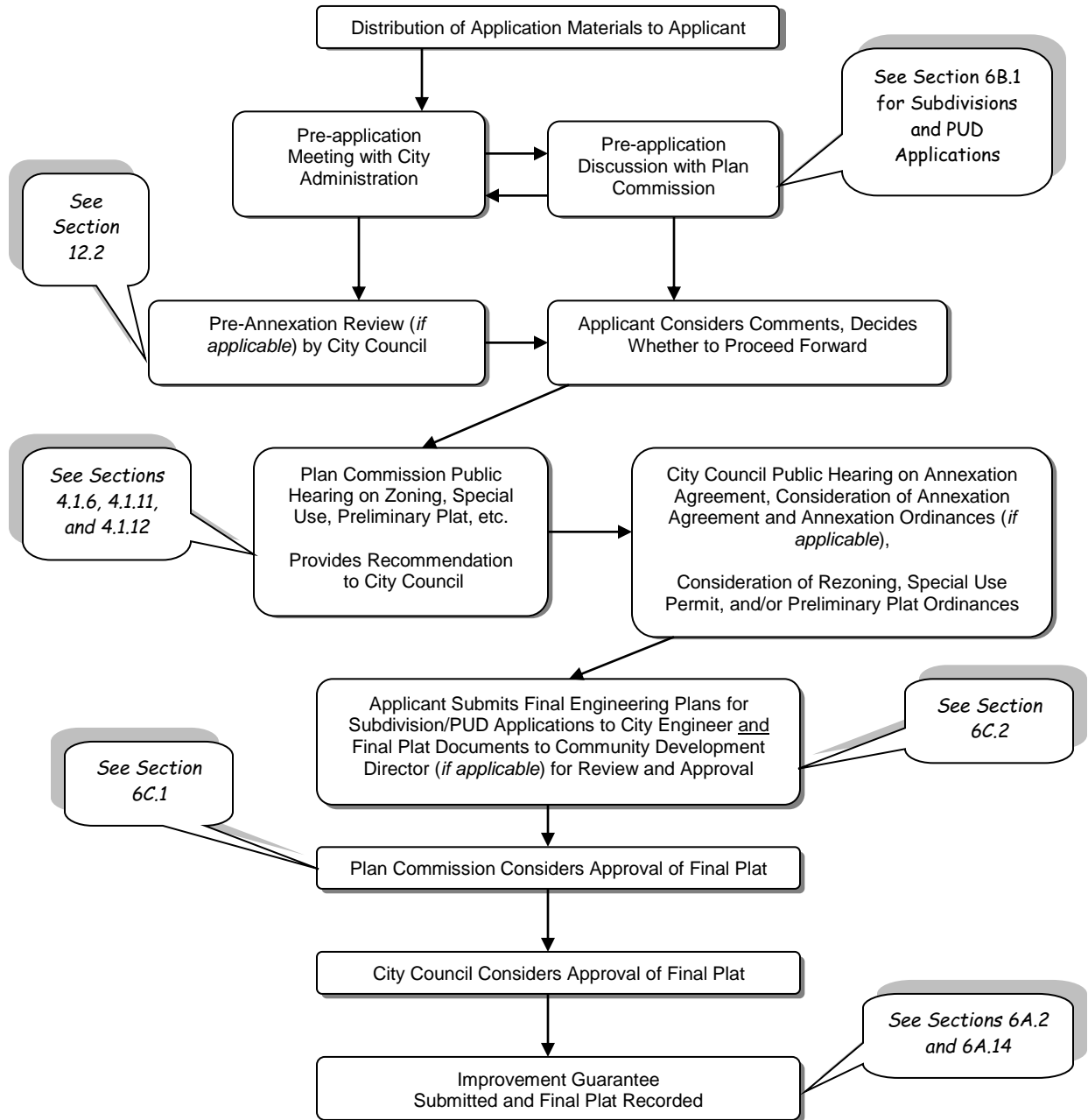
- A. If the owner has entered into a contract for the sale of the subject property, the contract purchaser may be a petitioner to the application or may be designated as the authorized agent of the owner.
- B. If the subject property is governed by a land trust, the trustee of the land trust shall be a petitioner or co-petitioner, and the beneficiaries of said trust shall be identified. All applications shall be verified by the applicant, petitioner, or co-petitioner in his or her capacity as trustee.
- C. When the owner is a business entity, the application shall include the names and addresses of all true and actual owners of such business.
- D. When the petitioner is a partnership, joint venture, or unincorporated association, the application shall include the names and addresses of all partners, joint venturers, syndicate members, or members of the unincorporated association.

4.1.3 Form of Application

Applications required under this Chapter shall be submitted in both written and electronic form and in such numbers as required by the Community Development Director. An application shall be signed by the owner of the subject property and the owner's representative, if applicable. Application submittal materials may be obtained from the Community Development Department.

Commentary:

The following flow-chart provides a general depiction of the development review and approval process. Additional standards and specifications for regarding the review and approval of subdivision and PUD proposals can be found Chapters 6A, 6B, and 6C.



4.1.4 Filing Fees

Applications shall be accompanied by required administrative and filing fees established by the City Council. No application shall be processed and no application shall be considered submitted until said fees have been paid.

4.1.5 Application Completeness

An application shall be considered complete if it is submitted in the required format, includes all mandatory information, and is accompanied by required fees. Any application determined to be incomplete shall be returned to the petitioner with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected.

4.1.6 Public Hearing Notices

- A. Content and Approval. All public hearing notices required herein, except for posted notices, shall (1) indicate the date, time, and location of the public hearing, and the action that is the subject of the hearing; (2) indicate where additional information can be obtained; (3) describe the property involved in the application by common street address or addresses and the property index number (PIN) or numbers, sufficient to identify all the real property in the affected area; (4) describe the purpose of the application; and (5) the name of the petitioner. All notices shall be submitted to the Community Development Director for approval and assignment of a date and time for the hearing or action (*see Appendix G for Standard Public Hearing Notice*). (Ordinance Number 12-O-29, adopted May 15, 2012).
- B. Types of Notices
 - 1. Property Owner Notice. When the provisions of this Ordinance require notice to be made to neighboring property owners, the petitioner shall mail notice to either (1) the owner(s), as recorded in the office of the McHenry County Recorder of Deeds; or (2) the person(s) who last paid property taxes as reflected in the tax records of the McHenry County Treasurer. A mailed notice shall be made via First Class mail. At a minimum, notice shall be made to all record owners of property adjacent to the subject property, excluding public right-of-way. (Ordinance Number 09-O-64, adopted October 20, 2009).
 - 2. Newspaper Notice. When the provisions of this Ordinance require notice to be published in a local newspaper, the petitioner shall ensure that such notice is published in a newspaper of general circulation in the City of Woodstock.
 - 3. Posted Notice. When the provisions of this Ordinance require notice to be posted, the petitioner shall post the notice on the subject property so that it is clearly visible from a public street and within ten (10) feet of the property line nearest to a public street. The signage required for this notification will be provided by the City upon receipt of the required fee.
- C. Timing. Unless otherwise provided by state statutes or in this Ordinance, neighbor, newspaper, and posted notice of public hearings shall be mailed, published, and placed at least fifteen (15) but no more than thirty (30) days prior to the public hearing, meeting, or action that is the subject of the notice.

- D. Constructive Notice. Minor defects in notice content shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with notice requirements. Failure of a party to receive notice shall not invalidate any subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the date, time, and place of a hearing and the location of the subject property shall be strictly construed. If questions arise regarding the adequacy of the notice, the Plan Commission shall make a formal finding as to whether there was substantial compliance with the notice requirements of this Ordinance.

4.1.7 Administrative Review

The Community Development Director shall review applications required under this Chapter and provide a report and recommendation to the Plan Commission and the City Council.

4.1.8 Action by the Plan Commission

Unless otherwise expressly stated, the Plan Commission is authorized to recommend approval, approval with conditions, or denial of applications and permit requests based on compliance with applicable review and approval criteria. However, applications for a zoning change may not be approved with conditions. The Plan Commission may also table an application for additional review or refrain from taking action until additional information is obtained.

4.1.9 Conditions of Approval

When approving development applications, the Plan Commission may impose such conditions as allowed by law to reduce or minimize potential adverse impacts upon other property in the area, or to carry out the general purposes and intent of this Ordinance. In no instance, however, may conditions be imposed as a condition of zoning approval.

4.1.10 Approval Criteria and Burden of Proof

In all cases, the petitioner must be able to prove that an application complies with applicable approval criteria and requirements.

4.1.11 Public Hearings

- A. Location. Unless other provisions are made, a public hearing required in this Ordinance shall be held in the Council Chambers or a specific conference room at the City of Woodstock City Hall.
- B. Quorum. In order to conduct a required public hearing, a quorum of Plan Commission members shall be present. If a member is excused due to a conflict of interest or other relevant reason, and as a result a quorum is not present, the hearing may not be held. If it is impossible to achieve a quorum, the Plan Commission may by a simple consensus of those present, recommend that the required public hearing be referred to the City Council without a recommendation, in which case the City Council may conduct a required public hearing.

- C. Continuation. A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Ordinance, provided the continuance is set for a specific date, time, and location, and that said date, time, and location is announced at the public hearing.

4.1.12 Public Hearing Process

- A. During the public hearing process, the Plan Commission is not bound by strict rules of evidence as applied in Illinois courts pertaining to civil actions. Evidence shall be received which is material and relevant, and which would be relied upon by reasonably prudent persons in the conduct of serious affairs. When the admissibility of evidence depends upon an interpretation of substantive law, the Chairperson of the hearing body shall determine whether said evidence is admissible.
- B. Public Hearing Parameters. A public hearing and the notification requirements thereof shall comply with this Ordinance unless altered by the provisions set forth herein.

1. The Community Development Director reserves the right to engage the services of one or more court reporters to provide transcripts of the hearing. Costs associated with such transcripts shall be at the petitioner's expense and the proceedings shall not move forward until said costs are paid.

2. If City facilities are not sufficient to accommodate the number of persons expected at the hearing, the hearing may be held at another site. In such circumstances, the City may rent appropriate facilities and/or equipment and engage in the services of appropriate personnel necessary to conduct a proper hearing. Costs associated with such arrangements shall be at the petitioner's expense and the proceedings shall not move forward until said costs are paid.

3. All testimony presented at the hearing shall be under oath or affirmation. Any person appearing at the hearing shall have the right to give testimony and to comment on the petition. Any person testifying shall be required to state their name and address and, if applicable, who they are representing. Any person appearing at the hearing shall also have the right of reasonable cross-examination and the scope of the cross-examination shall be determined by the Chairperson of the Plan Commission.

4. The Plan Commission reserves the right to limit testimony, questions, comments and cross-examination to prevent argumentative comments or personal attacks, to maintain order and decorum during the hearing process, and to prevent irrelevant and unnecessarily repetitive materials in the record. Plan Commissioners reserve the right to ask questions of or reply to any party testifying in order to clarify an issue, statement, or fact.

5. Written statements may be accepted by the Plan Commission until such time as the public comment portion of the public hearing is closed.

6. Any person has the right to be represented by another individual at the hearing. Such individual shall also have the right of reasonable cross-examination and the scope of cross-examination shall be determined by the Chairperson of the Plan Commission.

7. The City, at its sole discretion, shall have the right to determine whether information provided can be evaluated by the City Administration. If this cannot be accomplished, the City shall have the authority to retain the services of one or more professional consultants or experts to assist in the review of the petition. Any and all costs for such services shall be at the petitioner's expense and the proceedings shall not move forward until said costs are paid. Such consultants or experts shall have the same standing to testify and to be cross-examined as any other witnesses at the hearing.

8. After the Plan Commission has passed a motion to close the public comment portion of the hearing, members may begin their deliberations in order to take action. The Plan Commission may begin its deliberations prior to the close of the hearing if additional public comment is anticipated or if members of the hearing body expect to ask questions of or reply to any party testifying

9. Members of the public may obtain copies of any documents filed with the City upon application and payment to the City of the actual cost of reproduction in accordance with the Freedom of Information Act.

10. The Plan Commission, subject to City Council approval, may establish reasonable rules and procedures, in addition to those set forth herein, for the conduct of hearings and procedures to be followed during hearings.

C. Order of Business. The content and order of presentation at a public hearing shall generally be as follows, but may be modified by the Plan Commission or its Chairperson prior to the start of the hearing:

- Establish the presence of a quorum.
- Identification of petitioner and verification of notice.
- Identification of witnesses and administration of oath or affirmation by hearing body Chairperson or City Attorney.
- Testimony and other evidence by petitioner and witnesses.
- Plan Commission examination and questioning of petitioner, witnesses, and other evidence.
- Examination of petitioner, witnesses, and evidence by persons attending the hearing. Such examination shall be limited to the scope of the testimony presented by the petitioner and on any verbal or written reports submitted by a witness as part of the application process.
- Presentation of testimony and other evidence by members of the public attending the hearing. The petitioner may examine and question those members of the public submitting such testimony and other evidence.
- Re-examination of the petitioner by the Plan Commission, if necessary.

D. Decision

1. At the conclusion of the evidentiary portion of the public hearing, the Plan Commission may move to close the public comment portion of the hearing or continue the hearing to a specific date, time and location. It may then deliberate its decision on the evidence presented. A decision shall be prepared, accompanied by relevant findings of fact if applicable, and shall be based on the record and pursuant to this Chapter. Such a decision shall not be valid unless approved by a majority of a quorum of the Plan Commission members.

2. The City Council may adopt the Plan Commission's findings or findings different from those of the Plan Commission. A decision by the City Council shall be approved by a simple majority of the Council members, except as provided for herein.

E. Additional Evidence or Testimony. Evidence or testimony may only be presented at the public hearing. If the Plan Commission requires additional evidence, or if any person desires to present additional evidence after the close of the public hearing, the public hearing shall be re-opened and conducted in accordance with this Section.

4.2 Zoning Text Amendments

4.2.1 Application Filing

A. Any person may file an application for a zoning text amendment to this Ordinance.

B. Applications for amendments to the zoning text of this Ordinance shall be submitted to the Community Development Department on forms available from the Community Development Department and with all required items.

4.2.2 Content Requirements

In addition to the requirements set forth in Section 4.1.2 and 4.1.3 of this Ordinance, applications for a zoning text amendment shall include but not be limited to the following items:

A. Name, address, and telephone number of applicant and, if applicable, the name and address of the applicant's authorized agent.

B. Specific zoning text amendment requested with text identified by Section number.

C. Explanation and justification as to why the zoning text amendment is being requested and why it is appropriate.

4.2.3 Public Hearing Notice

Upon receipt of the required application and a determination that it is complete, the Community Development Director shall authorize the scheduling of a required public hearing before the Plan Commission. Newspaper notice shall be provided for all public hearings in accordance with the requirements of Section 4.1.6 of this Ordinance.

4.2.4 Plan Commission Action

The Plan Commission shall hold a public hearing on a proposed zoning text amendment and shall make a recommendation to the City Council, based on the zoning text amendment approval criteria set forth herein. Such a recommendation shall be made within thirty (30) days following the date on which the required public hearing is concluded and closed. This time frame may be extended to a specific date at the request of the Plan Commission subject to the petitioner agreeing to such extension. If a recommendation cannot be made, the zoning text amendment shall be forwarded to the City Council for final consideration.

4.2.5 City Council Action

After receiving a required recommendation from the Plan Commission, the City Council shall review the application and approve, approve with conditions, or deny the proposed amendment. The City Council's action shall occur within thirty (30) days following the date on which the application is placed on a City Council meeting agenda and consideration of the application commences. This time frame may be extended to a specific date at the request of the City Council subject to the petitioner agreeing to such extension.

4.2.6 Zoning Text Amendment Approval Criteria

Zoning text amendments may be approved upon a finding that the following approval criteria have been addressed:

- A. The zoning text amendment corrects an error or inconsistency or meets the challenge of a changing condition;
- B. The zoning text amendment is consistent with the purpose and intent of this Ordinance; and
- C. The zoning text amendment will not adversely affect the health, safety, morals, and general welfare of the public.

4.2.7 Protests

If the Plan Commission fails to recommend approval of a proposed zoning text amendment, the amendment may be approved by the affirmative vote of a simple majority of the City Council.

4.2.8 Zoning Text

The following chapters shall constitute the zoning text of the City for purposes of amendment and revision:

- Chapter 2: Definitions
- Chapter 4: Sections 4.2 through 4.5, and Section 4.8
- Chapter 5: Planned Unit Developments
- Chapters 7A : Use Districts
- Chapter 7B: Use Standards
- Chapter 7D: Wireless Towers
- Chapter 7E: Overlay Districts

- Chapter 8A: Subdivision and Planned Unit Development Design Standards
- Chapter 8B: Conservation Design Standards
- Chapter 9: Off-Street Parking and Loading

4.3 Zoning Map Amendments and Zoning Changes

4.3.1 Application Filing

A. Applications for zoning map amendments or changes in zoning may be made by the owner of the subject property, the owner's authorized agent or representative, the Community Development Director, or the City Council.

B. A contract purchaser of the subject property may be considered the owner's authorized agent for purposes of filing a zoning map amendment or rezoning application.

C. An application for zoning map amendment or rezoning shall be submitted to the Community Development Department on forms available from the Department and with all required items. Such application may be filed and processed concurrently with other development applications.

4.3.2 Content Requirements

The application for a zoning map amendment or rezoning shall include, but not be limited to, the following items:

- A. The name, address, and telephone number of the owner of the subject property and, if applicable, the name and address of the owner's authorized agent.
- B. A description of the subject property, its general location, its present and proposed zoning designation, its area in acres or square feet, a plat of survey and legal description of the property, and its permanent Parcel Index Number (PIN).
- C. An explanation and justification as to why the zoning map change is being requested, the general or specific intended use of the subject property if known, and how it relates to the use and zoning status of surrounding land parcels and to the City's comprehensive planning documents.
- D. A Natural Resources Information (NRI) Report from the McHenry County Soil and Water Conservation District or correspondence from said District indicating that an NRI Report may not be necessary. If the property is already developed, an NRI may not be required.
- E. An Endangered Species Consultation Program Agency Action Report from the Illinois Department of Natural Resources or correspondence from said Department indicating that such a Report is not necessary. If the property is already developed, an Endangered Species Consultation Program Agency Action Report may not be required.
- F. A "consent to on-site inspection" form.

4.3.3 Public Hearing Notice

Upon receipt of the required application and a determination that it is complete, the Community Development Director shall authorize the scheduling of a required public hearing before the Plan Commission. Neighbor, newspaper, and posted notices shall be provided for all public hearings in accordance with the requirements of this Ordinance. Owners of all property within 250 feet of the subject property shall be notified. The petitioner shall mail notice by First Class mail to either (1) the owner(s), as recorded in the office of the McHenry County Recorder of Deeds; or (2) the person(s) who last paid property taxes as reflected in the tax records of the McHenry County Treasurer. (Ordinance Number 09-O-64, adopted October 20, 2009).

4.3.4 Plan Commission Action

The Plan Commission shall hold a public hearing on a proposed zoning map amendment or zoning change and make a recommendation to the City Council, based on the approval criteria set forth herein. Such a recommendation shall be made within thirty (30) days following the date on which the required public hearing is concluded and closed. This time frame may be extended to a specific date at the request of the Plan Commission subject to the petitioner agreeing to such extension. If a recommendation cannot be made, the zoning map amendment or zoning change shall be forwarded to the City Council for final consideration.

4.3.5 City Council Action

- A. After receiving a recommendation from the Plan Commission, the City Council shall review the application and approve or deny the proposed zoning map amendment or rezoning. The City Council's action shall occur within thirty (30) days following the date on which the application is placed on a City Council meeting agenda and consideration of the application commences. This time frame may be extended to a specific date at the request of the City Council subject to the petitioner agreeing to such extension.
- B. When the following conditions occur, a zoning map amendment or rezoning shall require a favorable vote of three-fourths (3/4) of all the members of the City Council in order to be approved:
 - 1. If a written protest against the proposed zoning map amendment or rezoning is filed with the City Manager, signed and acknowledged by (a) the owner or owners of at least twenty percent (20%) of the land to be rezoned, or (b) the owner or owners of land immediately touching or immediately across a street, alley, or public right-of-way from at least twenty percent (20%) of the perimeter of the land to be rezoned.
 - 2. If the proposed zoning map amendment or rezoning receives a negative recommendation from the Plan Commission.
- C. If an application for a zoning map amendment or rezoning is denied, a subsequent zoning map amendment or rezoning pertaining to the subject property shall not be presented, scheduled for a public hearing, or reviewed by the Plan Commission until a time period of six (6) months has elapsed.

4.3.6 Zoning Map Amendment Approval Criteria

Zoning map amendments or rezonings may be approved based on the following criteria. In some instances all of the criteria may not be relevant or applicable, and none of the individual criteria by itself has more standing than the others.

- A. The zoning map amendment or rezoning corrects an error or responds to a changing condition in the area;
- B. The zoning map amendment or rezoning will allow land uses that are compatible with existing uses and zoning of nearby property;
- C. Adequate public facilities and services can be provided to the subject property. The subject property is suitable for the uses allowed if the zoning map amendment or rezoning is approved and possesses physical attributes which allows it to be used in accordance with the proposed zoning designation;
- D. The zoning map amendment or rezoning will not result in significant adverse impacts on other land in the vicinity of the subject property or on the environment, including air, water, noise, stormwater management, and natural resources;
- E. The zoning map amendment or rezoning will not result in a lessening of area property values or the ability of area properties to be used in accordance with the underlying zoning designation. If property values are lessened as a result of the proposed amendment, there should be a benefit to the public which justifies or supercedes such loss of value;
- F. The public or community benefit derived from the uses allowed within the proposed zoning district.

Commentary: Legal Standards for Reviewing a Rezoning Petition

In LaSalle National Bank of Chicago v. County of Cook, 12 Ill2d 40, 145 N.E. 2d 65 the Illinois Supreme Court established six factors to be considered when reviewing a zoning request. Subsequently, in the case of Sinclair Pipeline Company v. Village of Richton Park 19 Ill. 2d 370, 167 N.E.2d 406 the Supreme Court added two other factors. The factors in these cases constitute the legal basis for the review of zoning decisions by a local government and are summarized below.

1. **The existing uses and zoning of nearby property.** *Are the adjoining property uses consistent with the proposed use? Are there any conflicts between the proposed zoning district and the uses allowed therein and the uses either allowed or existing on nearby properties? Moreover, what is meant by the term “nearby”? Zoning has to begin and end somewhere, and just because a use exists on one side of a street does not mean it must extend across it. Often streets are used as zoning demarcation lines.*
2. **The extent to which property values are diminished by particular zoning restrictions.** *An increase in property value because of a change in allowable uses by itself is not a basis for rezoning. Rather, it is only one factor to be considered and must be weighed against any real or potential detriment to the public welfare resulting from the zoning change.*
3. **The extent to which the destruction of property values of the applicant promotes the health, safety, morals or general welfare of the public.** *This is both a fact question and also a policy question as it relates to the proposed use.*

4. ***The relative gain to the public as compared to the hardship imposed upon the individual property owner.*** For example, in considering a proposed commercial rezoning next to a residential area, one consideration would be the impact on the residences as compared to the benefit to the entire community of having a commercial development in the proposed location.
5. ***The suitability of the subject property for the zoned purposes.*** Under this consideration topography, soils, parcel size and location, and other physical characteristics of the parcel to be rezoned are examined to see if the zoning is appropriate.
6. ***The length of time the property has been vacant as zoned considered in the context of land development in the immediate area and the general vicinity of the subject property.*** This criterion is more relevant to in-fill properties than to outlying vacant lands proposed to be annexed to the City. In the former the length of time the property is vacant may suggest that current zoning is inappropriate and that rezoning is appropriate. In the latter case unannexed land that has been vacant does not in and of itself necessarily suggest rezoning is appropriate.
7. ***The community need for the proposed use.*** One weighs the need in the community for the proposed zoning change. For example, the City may consider whether sufficient commercial zoning already exists or whether a rezoning is appropriate due to a scarcity of multiple-family zoning.
8. ***The care in which the community has undertaken to plan its land use development.*** Here the courts look at a City's comprehensive planning documents to determine if previous proposals have been made to the plan regarding the land being rezoned. If zoning is challenged, it is helpful if the City has a record with regard to existing zoning being consistent with its comprehensive plan. If the plan suggests the rezoning of the property, it is difficult to defend against it. Also, past comprehensive planning efforts in the municipality may indicate the weight to be accorded the City's decision.

4.4 Special Use Permits

4.4.1 Application Filing

An application for a special use permit, verified by the owner or authorized agent of the owner of property involved, shall be filed in the Community Development Department upon a form provided by the Department and shall contain or be accompanied by all required information. Detailed plans, drawings, and other information as specified by this Ordinance shall be required for the various meetings and hearings at such time as prescribed by the Community Development Director. Special use permit applications may be filed and processed concurrently with other development applications.

4.4.2 Content Requirements

The application for a special use permit shall include but is not limited to the following items which shall be provided prior to the public hearing:

- A. The name, address, and telephone number of the owner of the subject property and, if applicable, the name and address of the owner's authorized representative.
- B. A description of the general location of the subject property, its present zoning status, its area in acres or square feet, a survey and legal description of the subject property, and its permanent Parcel Index Number (PIN).

- C. A detailed description of the special use requested and how it relates to the use and zoning status of surrounding properties and to the City's comprehensive planning documents. If the subject property is vacant and undeveloped, a detailed site plan shall be submitted which depicts how the subject property is intended to be developed.
- D. A Natural Resources Information (NRI) Report prepared by the McHenry County Soil and Water Conservation District or correspondence from said District indicating that an NRI Report is not necessary. If the subject property is already developed an NRI Report may not be required.
- E. An Endangered Species Consultation Program Agency Action Report from the Illinois Department of Natural Resources. If subject property is already developed or part of an existing development, an Endangered Species Consultation Program Agency Action Report may not be required.
- F. A "consent to on-site inspection" form signed by the applicant or owner.
- G. If the subject property is vacant and undeveloped, and not part of a platted subdivision, information shall be provided which depicts any floodplain or wetland features, existing vegetation, trees having a diameter measured at breast height (dbh) of four (4) or more inches, and existing stormwater drainage flows.

4.4.3 Public Hearing Notice

Upon receipt of the required application and a determination that it is complete, the Community Development Director shall authorize the scheduling of a required public hearing before the Plan Commission. Neighbor, newspaper, and posted notices shall be provided for all public hearings in accordance with the requirements of this Ordinance. Owners of all property within 250 feet of the subject property shall be notified. The petitioner shall mail notice by First Class mail to either (1) the owner(s), as recorded in the office of the McHenry County Recorder of Deeds; or (2) the person(s) who last paid property taxes as reflected in the tax records of the McHenry County Treasurer. (Ordinance Number 09-O-64, adopted October 20, 2009).

4.4.4 Plan Commission Review and Action. The Plan Commission shall hold a public hearing on the special use permit application and make a recommendation to the City Council, based on the special use permit approval criteria set forth herein. Such a recommendation shall be made within thirty (30) days following the date on which the required public hearing is concluded and closed. This time frame may be extended to a specific date at the request of the Plan Commission subject to the petitioner agreeing to such extension. The Plan Commission may recommend approval, denial, or approval with conditions of the requested special use permit. If a recommendation cannot be made, the special use permit application shall be forwarded to the City Council for final consideration.

4.4.5 City Council Review and Action

After receiving required recommendations, the City Council shall review the application and approve, approve with conditions, or deny the proposed special use permit. The City Council's action shall occur within thirty (30) days following the date on which the application is placed on a City Council meeting agenda and consideration of the application commences. This time frame

may be extended to a specific date at the request of the City Council subject to the petitioner agreeing to such extension.

4.4.6 Special Use Permit Approval Criteria

Special use permit applications may be approved after a finding that the following approval criteria have been addressed.

- A. That the special use will not impair or be detrimental to the public health, safety, morals or general welfare of persons residing or working in the vicinity.
- B. That the special use will not negatively impact or conflict with neighboring land uses or negatively affect the value of neighboring property.
- C. That the special use will not conflict with the general goals and objectives of Woodstock's comprehensive planning documents.
- D. That the special use will be designed, constructed, operated and maintained in a manner that is compatible with the existing or desired character of the surrounding area.
- E. That additional traffic which may occur as a result of the special use will not be detrimental to public safety and welfare.
- F. That the special use can be served by public facilities and services, and by private utilities.
- G. That the special use will comply with applicable City ordinances unless varied or waived by the City Council as part of the special use permit approval process.

4.4.7 Findings of Fact

All recommendations from the Plan Commission regarding special use permit applications shall be supported by findings of fact specifying the reasons and justification for the decision.

4.4.8 Lapse of Approval

Unless otherwise expressly stated in the approved special use permit, if an approved special use activity has not been established within two (2) years of the date of approval by the City Council or if the special use ceases to be maintained for a period of more than 1 year, the special use permit shall lapse and be of no further effect. For purposes of this section, the term "established" shall mean the issuance of a building or construction permit or certificate of occupancy for the special use. For phased development, the term "established" shall mean the issuance of a building or construction permit for the first phase of development. The time-frames stated herein may be extended for up to one year by the Community Development Director if a written extension request is filed with the City prior to the expiration of the special use permit. Any additional extensions may be granted by the City Council only upon written request of the applicant.

4.4.9 Amendments to an Approved Special Use Permit

Any proposed change, amendment, or alteration of an approved special use permit, except for those needed to comply with the City's engineering standards or building code requirements, or those due to a reduction in density, floor area, or impervious surfaces, may be approved only pursuant to the standards and procedures established for issuance of a special use permit.

4.5 Zoning Variations

Variations can be requested from any of the provisions set forth in the City's zoning regulations, except that a "use" variation, which authorizes the establishment of a land use that is not otherwise allowed in the underlying zoning district, is not permitted. Variations requested as part of a planned unit development petition, traditional neighborhood development petition, or special use permit petition may be approved as part of the review and approval process for those petitions. The term "variation," as used in this Section, does not include and is not applicable to zoning map amendments or zoning text amendments.

Commentary: Use Variations

Variations can be requested from virtually any of the provisions set forth in the City's zoning regulations. However, an exception to this is when a variation is requested that would allow a use, not otherwise allowed in the underlying or surrounding zoning district, to be established on a property. By approving such a use, the City Council would be authorizing an alteration of such magnitude that it would effectively be changing the zoning of the property. When a use is contemplated that is not allowed in the underlying zoning district, the applicant may wish to consider applying for a zoning map amendment or for a change in the zoning status of the subject property.

4.5.1 Application Filing

An application for a zoning variation, verified by the owner or authorized agent of the owner of the property involved, shall be filed in the Department of Community Development on a form provided by said Department, which shall contain or be accompanied by all required information. Detailed plans, drawings, and other information as specified herein shall be required for the various meetings and hearings at such time as prescribed by the Director of Community Development. Applications for a zoning variation may be filed and processed concurrently with other development applications.

4.5.2 Content Requirements

Application for a zoning variation shall include but is not limited to the following:

- A. Name, address, and telephone number of applicant and of property owner.
- B. General location and legal description of the property for which the zoning variation is requested. A survey of the property may be required depending upon the type of variation being requested.
- C. The specific zoning variation requested with reference to the specific section of this Ordinance being varied.

- D. Detailed explanation as to why the zoning variation is being requested, with specific reference to the variation criteria set forth herein.

4.5.3 Public Hearing Notice

Upon receipt of the required zoning variation application and a determination that it is complete, the Community Development Director shall authorize the scheduling of a required public hearing before the Plan Commission. Neighbor and newspaper notices shall be provided for all public hearings in accordance with the requirements of this Chapter. Owners of all property abutting or across the road, street, or alley from the subject property shall be notified. The petitioner shall mail notice by First Class mail to either (1) the owner(s), as recorded in the office of the McHenry County Recorder of Deeds; or (2) the person(s) who last paid property taxes as reflected in the tax records of the McHenry County Treasurer. (Ordinance Number 09-O-64, adopted October 20, 2009).

4.5.4 Administrative Review and Action

A request to modify by twenty (20) percent or less any numeric standard set forth in Table 7A.2 or in Sections 7A.3, 9.8, 9.12, or 9.17 of this Ordinance, except standards pertaining to required lot area, may be reviewed and approved by the Community Development Director as an administrative variation, in which case a public hearing is not required. Before such variation may be granted, a notice of the intent to grant such variation shall be sent by First Class mail to the record owners of property abutting or across the road, street, or alley from the subject property. If any such owner files a written objection with the Community Development Director within fifteen (15) days of receipt of such notice, the variation must then be presented to the Zoning Board of Appeals and City Council in accordance with the provisions of this Chapter. The approval of an administrative variation shall be based on the “standards for zoning variations” set forth herein.

4.5.5 Plan Commission Review and Action

The Plan Commission shall hold a public hearing on a zoning variation application and make a recommendation to the City Council, based on the variation approval criteria set forth herein. The Plan Commission shall submit its recommendation to the City Council within 30 days following the date on which the public hearing for a zoning variation is closed and concluded. The Plan Commission may recommend approval, denial, approval of a lesser variation, or approval with conditions of the requested zoning variation. Such a recommendation shall be made within thirty (30) days following the date on which the required public hearing is concluded and closed. This time frame may be extended to a specific date at the request of the Plan Commission subject to the petitioner agreeing to such extension.

4.5.6 City Council Review and Action

After receiving required recommendations, the City Council shall review the application and approve, approve with conditions, or deny the proposed zoning variation based on the variation approval criteria set forth herein. The City Council’s action shall occur within thirty (30) days following the date on which the application is placed on a City Council meeting agenda and consideration of the application commences. This time frame may be extended to a specific date at the request of the City Council subject to the petitioner agreeing to such extension.

4.5.7 Standards for Zoning Variations

Zoning variations may be approved after a finding that the following approval criteria have been met. A zoning variation is appropriate when:

- A. It is deemed that a hardship exists; and
- B. It will not have an undue deleterious effect; and
- C. It is the minimum needed to remedy the hardship; and
- D. It is consistent with the intent and purpose of this Ordinance, as well as the Woodstock City Code and plans adopted by the City.

Commentary: Standards for Zoning Variations

Hardship: *A hardship occurs when:*

--The strict application of the ordinance prohibits the position, setback, size, height, or area of an improvement that is otherwise reasonable and common for similarly zoned properties in the vicinity; and

--Said improvement is consistent with the character of the vicinity or the municipality as a whole; and

--The request is due to the irregular shape, dimensions, or frontage of a property or its particular environmental or topographical conditions and are, therefore, generally inapplicable to other similarly zoned properties.

A hardship is does not occur when:

--The irregular conditions that are the basis of the hardship have been created by the petitioner at any time; or

--The irregular conditions that are the basis of the hardship were known, or reasonable to have been known, to the petitioner when financial interest was first taken in the property; or

--It is based on a desire to enjoy a special privilege or additional right not available to owners or occupants of other lots subject to the same provision; or

--It primarily stems from an economic hardship by the petitioner; or

--It is primarily sought in order to increase the resale value of a residential property or commercial gain realized from a commercial property.

Undue Deleterious Effects: *It is not uncommon that any change to a property, regardless of whether a variance is required, may be unwelcome by neighboring property owners who believe that it will result in negative impacts on their property values, views, or general use and enjoyment. In determining what constitutes an undue deleterious effect, one must first establish if a negative impact is likely, whether that negative impact is due exclusively to the aspect for which a variation is required, and if the negative impact is disproportional to the hardship of the petitioner.*

A deleterious effect includes detrimental impacts to:

--The general health, welfare, and safety of the public, including the adequate supply of light and air to neighboring property; environmental quality; and risk of flood or fire

--Property values or the reasonable use and enjoyment of neighboring property

--Automotive and pedestrian traffic flow, safety, and congestion

--Community character (i.e., the elements of the natural and built environment that combine to shape local identity)

When a negative effect of a proposed change is equal to or greater than the hardship of the petitioner, the deleterious effect can be considered "undue."

Minimum Amount Required: The requested variance is the minimum required to address the proven hardship and cannot be accomplished by alternate, lesser means.

4.5.8 Lapse of Approval

Unless otherwise expressly stated when a zoning variation is approved, if the activity for which said variation is granted does not commence within two (2) years of the approval date, said approval shall lapse and be of no further effect. For purposes of this section, the term "established" shall mean the issuance of a building or construction permit or certificate of occupancy for the variation. The time-frame stated herein may be extended for up to one (1) year by the Community Development Director if an extension request is filed with the City prior to the expiration of the variation. Any additional extensions of approval may be granted by the City Council upon written request of the applicant.

4.6 Interpretations and Appeals of Administrative Decisions

4.6.1 Interpretations

- A. The Community Development Director is authorized to interpret the zoning map and the text of the City's zoning regulations, and to make determinations regarding disputed zoning district boundary lines and similar questions. An applicant for interpretation may appeal the decision of the Community Development Director in the manner set forth herein.
- B. An application for interpretation of the zoning map or text of the City's zoning regulations shall be submitted to the Community Development Director and shall include sufficient information to enable an interpretation to be made.
- C. Where uncertainty exists as to the boundaries of districts, Section 7A.1.1.B shall apply.

4.6.2 Appeals

- A. An appeal of any order or decision of the Community Development Director regarding the zoning regulations of the City may be presented for consideration to the Zoning Board of Appeals by the aggrieved individual or party. Any such appeal shall be submitted in writing and must include the basis for such appeal. A notice of appeal shall be considered filed with the Zoning Board of Appeals when delivered to the Department of Community Development and the date of filing shall be entered on the notice of appeal.

- B. An appeal to any such order or decision must be filed with the Community Development Director within thirty (30) days after the date on which the order or decision is made. The Community Development Director shall schedule a meeting of the Zoning Board of Appeals within 45 days and transmit to the Board all applicable materials comprising the record relating to the order or decision being appealed.
- C. The filing of an appeal stays all action by the City seeking enforcement of or compliance with the order or decision being appealed, unless the Community Development Director determines that, in his opinion, such a stay would create a public safety hazard or cause immediate peril to life or property.
- D. The Zoning Board of Appeals may reverse or affirm (wholly or in part) or may modify the order or decision being appealed. Such a recommendation shall be made within thirty (30) days following the date on which the Zoning Board of Appeals' consideration is concluded. This time frame may be extended to a specific date at the request of the Zoning Board of Appeals subject to the petitioner agreeing to such extension.
- E. The action of the Zoning Board of Appeals may be appealed to the City Council by the aggrieved individual or party or by the Community Development Director. Such an appeal must be filed with the City Manager within thirty (30) days after the date of the Zoning Board of Appeal's action. The City Council's action shall occur within thirty (30) days following the date on which the application is placed on a City Council meeting agenda and consideration of the application commences. This time frame may be extended to a specific date at the request of the City Council subject to the petitioner agreeing to such extension.

4.7 Annexations

Refer to Chapter 12 herein, entitled "Annexations and Disconnections".

4.8 Certificates of Occupancy

No land or building shall be occupied or used in whole or in part for any use until a Certificate of Occupancy has been issued by the Community Development Director, indicating that the building or use complies with all requirements of this Ordinance and other applicable City ordinances and regulations. Upon completion of any building or structure in accordance with applicable building permit requirements and prior to occupancy, a Certificate of Occupancy is required for the use originally designated. A Certificate of Occupancy is not required where there is a change in occupancy or a change in ownership, but not a change in use.